

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DEPT OF TRANSPORTATION
DOCKETS

MAY 13 P 2:17

In the Matter of:

RJM GLOBAL, INC.,

Respondent.

**Docket No. FMCSA-2007-29306¹
(Western Service Center)**

ORDER

This matter comes before the Agency upon a September 24, 2007, Motion for Order of Default filed by the Field Administrator, Western Service Center, Federal Motor Carrier Safety Administration (FMCSA) (Claimant).

1. Background

On June 19, 2007, FMCSA's Nevada Division Administrator issued a Notice of Claim (NOC) against RJM Global, Inc. (Respondent).² Specifically, the NOC, which was based on a May 21, 2007, compliance review, charged Respondent with: (1) one violation of 49 CFR 395.3(a)(2)—requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty—with a proposed civil penalty of \$11,000; and (2) three violations of 49 CFR 395.8(e)—false reports of records of duty status—with a proposed civil penalty of \$760 per violation. The NOC proposed a total civil penalty of \$13,280.

¹ The prior case number was NV-2007-0028-US0420.

² Attachment A to Field Administrator's Motion of Order of Default and Memorandum of Law In Support (Claimant's Motion for Default).

On or about July 19, 2007, Respondent served a reply to the NOC.³ In its reply, Respondent neither contested nor admitted the violations and did not request administrative adjudication. However, Respondent described corrective action it was taking to achieve compliance with the violations alleged in the NOC and enclosed supporting documentation. Respondent also claimed it has been downsizing due to financial hardship and that "this fine would be a devastating hardship if this had to be paid in full".

In its Motion for Default, Claimant moved for entry of an order of default declaring the NOC (including the civil penalty) as the final order in the proceeding because Respondent's reply was so deficient as to constitute no reply at all. Respondent did not reply to the motion.

2. Decision

Under 49 CFR 386.14(b) of the revised rules of practice, a respondent must reply to the NOC by choosing one of three options: (1) paying the full amount of the claim; (2) contesting the claim by requesting administrative adjudication pursuant to 49 CFR 386.14(d)(1)(iii)⁴; or (3) seeking binding arbitration in accordance with the Agency's dispute resolution program. Respondent in this case chose none of the above. However, by not denying the violations and describing corrective actions it was taking to come into compliance, Respondent effectively admitted each of the charges. Nevertheless, it took

³ Attachment B to Claimant's Motion for Default.

⁴ These options are: (A) submission of written evidence without a hearing; (B) an informal hearing; or (C) a formal hearing.

issue with the amount of the civil penalty proposed in the NOC based on corrective actions and financial hardship.

FMCSA's "Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996" (Guidance) provides that binding arbitration is available in civil penalty proceedings "in which the only issues remaining to be resolved are the amount of the civil penalty owed and the amount of time in which to pay it."⁵ Respondent, having admitted the violations, requested precisely what is required for binding arbitration—a reduction in the civil penalty. Under these circumstances, it was not necessary for Respondent to use the words "binding arbitration."⁶ Moreover, the Guidance provides that a matter may be sent to binding arbitration "as a result of the Chief Safety Officer's independent review of the case pleadings...." Based upon review of the pleadings,⁷ this matter should be referred to an arbitrator. Nevertheless, for this to occur, both parties must consent. Accordingly, Claimant has 15 days from the date of service of this Order to provide his consent. If he does not consent to binding arbitration referral, the matter will be assigned to the Department of Transportation's Office of Hearings. Claimant's request for a Final Order is denied.

⁵ The Guidance may be found in Docket No. FMCSA-2003-14794 or at 69 Fed. Reg. 10288 (March 4, 2004).

⁶ See *In the Matter of B.E. Pepin Poultry, Inc.*, Docket No. FMCSA-2008-0054, Order Denying Motion for Default (June 4, 2008), at 3; and *In the Matter of Layne Pumps, Inc.*, Docket No. FMCSA-2006-26197, Order (November 7, 2008).

⁷ The Assistant Administrator is the Chief Safety Officer of the Agency, pursuant to 49 U.S.C. § 113(e). See 49 CFR 386.2.

It Is So Ordered.



Rose A. McMurray

Assistant Administrator

Federal Motor Carrier Safety Administration

5-11-09

Date

CERTIFICATE OF SERVICE

This is to certify that on this 13 day of May, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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